

**REMARKS**

This is in response to the Office Action mailed on June 7, 2006. In the Office Action, claims 1-44 pending in the application were rejected. All of the claims are believed to be patentable in their current form, and no amendments are made by the present Response. Reconsideration and allowance of all pending claims for the reasons set forth below are requested.

**Claim Rejections Under 35 U.S.C. § 112**

Claims 1-6, 19-24, 35 and 40 were rejected under 35 U.S.C. §112, second paragraph. The Examiner indicated that it was believed unclear “how the Applicant is ‘determining’ the desired answers from the user.” Final Office Action, page 4, section 2. As pointed out in the Response to the previous Office Action, Applicant finds no language in any of these claims to the effect that the desired answers from a user are “determined.” Rather, as set forth in the claims, the questions presented to a user “are designed to establish whether at least one of a plurality of AM systems is suitable as a possible AM system for the customer.” *See, e.g.*, claim 1. Other claims recite specific information that is elicited by the questions.

Applicant believes that the plain language of these claims is perfectly clear, and is supported by the detailed description. It is readily apparent that each of the questions that elicits specific types of information recited in the claims will be posed in such a way as to simply ask the user for the relevant information. Moreover, many examples are provided in the application in support of this feature of the invention. For example, the Examiner only need refer to the many questions and typical answers provided on pages 7 and 8 of the application. All of these questions can clearly be answered by a knowledgeable user, and can serve as the basis for determining the type of information elicited. Accordingly, the rejection under 35 U.S.C. §112 is believed to be without basis. Its reconsideration and withdrawal are requested.

**Claim Rejection Under 35 U.S.C. § 103**

The Office Action indicates that claims 1-41 were rejected in view of Tavor et al. (U.S. Patent No. 6,070,149, hereinafter “Tavor”) in view of Henley (Publication No. US/2002/0065758, hereinafter “Henley”) and Bui et al. (U.S. Patent No. 6,830,549, hereinafter “Bui”). However, Applicant notes that certain of these claims were, in fact, rejected in view of a fourth reference as indicated on page 10 of the Office Action (*see*, Section 5), and the rejections of claims 1-41 appears also to include the rejection of claim 43. Applicant believes, however, that all of the claims are believed to be patentable over all of the cited references in their present form, and will not dispute the basis for the various rejections formally.

Claim 1, and the other independent claims 19, 35 and 40 pending in the application essentially relate to identifying specific types of medical systems, that is, ambulatory monitoring (AM) systems for customers via a network link. The system and method are specifically adapted to this application and type of equipment. The invention is not a generic tool for selling products over the Internet.

The Examiner, in formulating the present rejection and in a manner similar to that set forth in the previous Office Action, applied the three primary references as follows. The Tavor reference is apparently cited for teaching “a system which enables a user to purchase products (e.g., medical device) or services over the Internet.” Final Office Action, page 3, Response to Arguments. The Henley reference was “used to teach that medical equipment and services can be sold over the Internet.” *Id.* The Examiner further applied Bui “for the mere fact to suggest that ambulatory monitoring devices are widely used by users at their home locations or alternative care environments.” *Id.*

Applicant submits that this rejection is defective on its face. The rejection fails to establish a *prima facie* case of obviousness. A *prima facie* case of obviousness requires that the references disclosed each and every element of the claims, and that there be some

reasonable motivation or suggestion to combine the references. This is not the case of the present rejection.

**Tavor teaches a generic tool without any application to the claimed subject matter.**

The Tavor reference, which forms the basis for all of the rejections, in fact teaches a generic sales tool for use in Internet sales. The tool can be adapted for various purposes, and Tavor provides specific functional blocks, apparently implemented through software, for exchanging information with a possible purchaser. Tavor never mentions any medical device whatsoever that may be sold via the tool, any patient community that can be serviced, and certainly does not mention AM devices. Indeed, although the Examiner seems to indicate in the Response to Arguments section of the Office Action that Tavor teaches the ability to sell medical devices over the Internet, this is found nowhere in the reference. Indeed, at best, Tavor provides a tool that can be a precursor to designing a system such as that claimed.

**Henley and Bui fail to obviate the deficiencies of Tavor.**

The Examiner, in summarizing the application of the references in the Response to Arguments section of the Final Office Action, seemed to indicate that Henley was simply used to indicate that medical equipment and services can be sold over the Internet. Even if this were true, it does not establish how and why the Tavor and Henley references should be combined specifically for recommending AM systems to customers.

The Examiner appears to assume that AM systems are no different whatsoever from any other medical systems, and that medical systems and devices are no different than any other products that can be sold by the system of Tavor. This is not the case. Prior to the invention, no one in the field had even attempted to allow users needing ambulatory monitoring to evaluate possible products without an office visit or professional intervention. Indeed, because of the very nature of ambulatory monitoring, patients may not wish to make multiple visits to multiple locations simply to review

possible devices that can be used or should be recommended. At the very least, the general proposition that Henley discloses the sale of medical equipment over the Internet is not enough to support or enable the combination of the references that would render the pending claims obvious.

Again in the Response to Arguments section of the Office Action, it is relatively unclear what the exact basis of the rejection is intended to be. The Examiner stated, for example, that “the straightforward combination of Tavor and Henley alone would teach the claimed invention seeing as the combination teaches the sale of medical equipment over the Internet.” *Id.* Applicant assumes, therefore, that the Bui reference is unnecessary for the rejection. However, the rejection was formulated at least partially based on Bui, indicating that some element must be missing from Tavor and Henley. In the same section of the Office Action, however, the Applicant explained that Bui “was used for the mere fact to suggest that ambulatory monitoring devices are widely used by users in their home locations or alternative care environments.” *Id.*

Even if these general statements made by the Examiner are true, they are insufficient to teach one skilled in the art *how* to combine the references to arrive at the claimed invention. On this basis alone, the Examiner has failed to establish a *prima facie* case of obviousness.

**The Examiner has failed to set forth any reasonable basis for combining the references.**

In the Response to Arguments section of the Office Action, the Examiner appeared to simply state that the references could be combined in a “straightforward” manner. In the detailed section of the Office Action, the Examiner repeated, from the former Office Action, that:

It would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention to modify the system of

Tavor et al. and include the product being a medical device such as an ambulatory monitoring system as taught by Henley and Bui et al. because it greatly improves the convenience of the system by providing the user with a medical device that is widely used and has many different models, which a user would need help in determining which system to purchase. *Id.*, page 6.

Applicant submits that the mere fact that teachings in the prior art can be combined is not sufficient to establish *prima facie* obviousness. *See*, MPEP 2143.01. Rather, the prior art must suggest the desirability to make the combination. One skilled in the art, in considering Tavor, Henley and Bui, would just as well conclude that AM systems are completely inappropriate for recommendation or sale over the Internet. Certainly, nothing in the references even remotely touches on AM devices, any particular concern with such devices or considerations in their recommendation or sale. Accordingly, the Examiner's conclusion can be considered no more than mere conjecture. Such is insufficient to establish a *prima facie* case of obviousness.

Indeed, with the risk of oversimplifying the analysis set forth by the Examiner, the Tavor reference, as indicate above, provides no more than a tool for certain Internet-type sales. Such tools may be compared to software, such as text editing software, design software, and the like. This tool or packet of tools, can be used for many purposes. If the Tavor toolset were used to design the present invention, the invention would nevertheless breath life into the particular application and structure claimed well beyond the raw toolset provided by Tavor. Henley and Bui provide to teachings whatsoever for AM systems or how they should be considered or recommended. As such, the references are simply devoid of any motivation for adapting Tavor, or any other such raw tools to arrive at the claimed invention.

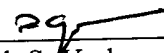
Thus, for this additional reason, Applicant submits that a *prima facie* case of obviousness is not made out by the Examiner. Reconsideration and allowance of all pending claims are therefore requested.

**Conclusion**

In view of the remarks and amendments set forth above, Applicant respectfully requests allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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Patrick S. Yoder  
Reg. No. 37,479  
FLETCHER YODER  
P.O. Box 692289  
Houston, TX 77269-2289  
(281) 970-4545